

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, MADHYA MARG, SECTOR 18-A, CHANDIGARH

Petition No. 28 of 2014

(Suo-Motu)

Date of hearing: 19.08.2020

Date of Order: 25.08.2020

Petition (Suo-Motu) to comply with Judgment dated 23.04.2014 passed by Hon'ble APTEL in Appeal No.207 of 2012 impugning Order dated 01.10.2012 in Petition No.38 of 2011.

AND

- In the matter of: 1. Nabha Power Limited, Aspire Tower, 4th Floor, Plot No. 55, Industrial and Business Park, Phase-I, Chandigarh -160 002.
2. L&T Power Development Limited, Powai Campus, Gate No.1, C Building, 1st Floor, Saki Vihar Road, Mumbai-400072.
3. Punjab State Power Corporation Limited, The Mall, Patiala.

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

For NPL: Sh. Aniket Prasoon, Advocate
Sh. Priya Dhankhar, Advocate
Ms. Shweta Vashist, Advocate
Sh. Balram Verma
Sh. Abhijit Laha

For PSPCL: Sh. Ranjitha Ramachandran, Advocate
Sh. Poorva Saigal, Advocate
Sh. Bhupinder Sharma, CE/ARR & TR
Sh. V.P.S Kailay, SE/Projects
Sh. H.S. Dhaliwal, ASE/Civil
Sh. Karanpreet Singh, AE/Civil
Sh. Bhuvnesh Nauhria, SE/TR-2
Sh. Lovleen Gupta, AEE/TR-5

L&T Power: None
Development Ltd.

ORDER

The petition was taken up for hearing. During the hearing, the Commission sought information / clarification from NPL as under.

1. The major changes envisaged in the Railway Siding work as per the Hon'ble APTEL Order dated 23.04.2014 in Appeal no. 207 of 2012 are an additional bridge of 45 meters span due to induction of DFC, increase in

span of bridge envisaged in the 2008 RITES Report from 18 meters to 30.5 meters due to crossing of DFC and increase in track length. Further, the Hon'ble APTEL has stated in its Order that NPL is not entitled to claim cost escalation, if any, in the works envisaged in the "In-Principle" approval of the Railway, which formed part of the bid documents.

a) Both the above mentioned ROR bridges and the bulb portion have not been constructed / completed so far. Further, as per the 2011 RITES Report, there was an increase of 0.915 km track length (Entry line of 0.211 km and Return line of 0.704 km) in the lead line only. NPL to justify the same as against the actuals being claimed now.

b) In the Minutes of Meeting held between NPL and DFCCIL on 08.08.2017, the following was mentioned:

"The rail connectivity of the Private Sidings (PS) belonging to TPPs are covered under the DFCCIL-Private Siding Rail Connectivity policy of DFCCIL. Since Nabha PP is located on DFC side it should be connected with DFC network. A proposal along with FSR mentioning traffic movement in construction phase of DFC and requisite fee should be submitted with DFCCIL in accordance with the provisions of DFCCIL's Policy."

NPL to apprise the Commission of the latest developments with DFCCIL. In case the NPL Railways Siding (both UP & Down line). shall be connected to DFCCIL, necessity of construction of the 2 RORs of span length 30.5 meters and 45 meters needs to be justified by NPL.

2. The capacity charges quoted by NPL to win the competitive bid for selection of developer for "Procurement of Power on Long-Term Basis from domestic Coal Based Thermal Power Station to be setup at village Nalash near Rajpura, District Patiala, Punjab, India" would have included the approximate amount of Rs. 361.61 crore (including IDC) required for the Railway Siding as per the 2008 RITES Report, as also other works pertaining to Railway Siding but not included therein. The Railway Siding came up in February, 2016. As per the Hon'ble Supreme Court Judgment dated 05.10.2017 in Civil Appeal No. 179 of 2017 filed by NPL, cost of road transportation of coal was allowed to be paid to NPL by PSPCL till the Railway Siding was put to use. Thus it appears that NPL would have been paid for the Railway Siding in capacity charges and additionally road transportation from COD till the Railway Siding was put to use. NPL needs to put up a value to this and justify why this double payment should not be corrected.
3. In the In-Principle Approval for Railway Siding accorded by Northern

Railway dated 05.11.2008, it was mentioned:

“In case, the station building is required to be shifted on the UP side for accommodating the connectivity and 2 UP loop lines, the cost for the same will have to be borne by the party including land acquisition, if any.”

This risk was taken by NPL at the bidding stage. In view of the above, NPL to justify its claim of reconstruction of Sarai Banjara Railway Station alongwith associated Civil, S&T, OHE, GE works etc. as additional cost whereas this possibility/risk was well known to the bidders at the time of bidding.

4. The ROR and bulb portion has not been constructed at all. While the to and fro tracks have been laid down but one of the tracks has not been put to use.

Design and layout/route of lead line was originally envisaged with manned & unmanned level crossings in 2008 RITES report but as per the actual construction being claimed by NPL, there are no manned & unmanned level crossings as against which overhead bridges have been constructed and the route of the line has also been changed.

NPL needs to justify the increased cost of the track and explain why the consumers should be asked to pay for a line not being used.

NPL to provide the documentary evidence where these changes have been requisitioned/demanded by the Railways.

5. The cost of In-plant works was Rs. 98.71 crore in 2008, Rs. 66.51 crore in 2011 as submitted by NPL whereas the actual claimed is Rs. 144.18 crore. Any changes in the Railway tracks and equipment made within the NPL Plant e.g. change in design of railway siding from diagonal to horizontal position and resultant changes etc. have been made for NPL's benefit and are not part of the change in law allowed by Hon'ble APTEL. NPL needs to explain why this has been included.
6. NPL allotted the complete Railway Siding work to L&T-RBU vide contract dated 08.06.2011 at the contract price of Rs. 360 crore. On completion of the work, the change order dated 01.10.2016 was issued for Rs. 342.94 crore after deducting Rs. 29.52 crore on account of ROR including bulb portion and addition works of Rs. 12.46 crore on account of increase in quantity of bridges, P-Way, OHE and other civil work & project management charges.

This revised contract value of Rs. 342.94 crore includes Rs. 302.31 crore on account of Civil works, S&T works, OHE works and GE works as

against Rs. 288.74 crore on account of the said works in 2011 RITES Report, whereas NPL has claimed Rs. 300.87 crore in actual. NPL needs to justify the difference.

7. The L&T - RBU Contract has a provision of cost escalation from 2.25% to 11.25% through a price adjustment formula and, for variation beyond 11.25% the adjustment is subject to a ceiling of 9%. Since, no cost escalation has been given by NPL to L&T-RBU in actual, NPL to justify its claim of increase in the rate of many items like P-way, Soil works, S&T and OHE etc which has been shown in the claim of Rs. 569 crore.
8. The Feasibility Certificate was accorded by Railways & DFCCIL in January, 2012 and ESP drawings were approved in November, 2012. Thereafter, revision R1 was added in September, 2013 followed by revision R2 in December, 2014. R1 pertains to non-exclusive usage of one UP line and two DN loop lines created on Railway land at Sarai Banjara Station for which no land license fee will be charged from the Siding owner and R2 broadly pertains to the interim arrangement for receiving maximum three coal rakes per day and the return line was only to be utilized for train movement between SBJ and NPL Railway siding. Evidently the physical scope remained the same as per the 2012 approval. The land acquisition/siding construction started late and was not undertaken immediately in 2012 but was delayed for 2 years, leading to increase in cost.

The land for the Railway Siding was mainly acquired during May, 2012 to January, 2014. The increase in cost of land is due to rise in price of land from Rs. 25 lacs/acre (2008 RITES Report) to Rs. 50 lacs/acre (2011 RITES Report) to Rs. 1 crore/acre as actual (NPL has claimed Rs. 104.68 crore for 104.68 acre) as per land documents. However, in the November, 2019 RITES Report, the cost of the land (including Consultancy Charges) has been mentioned as Rs. 132.96 crore for 110.8 acres at the rate of Rs. 1.2 crore/acre.

The cost of land for the railway siding was originally envisaged as Rs. 24.70 crore for 40 Hectares in the 2008 RITES report, however in the 2011 RITES report it increased to Rs. 67 crore and now being claimed by NPL as Rs. 104.69 crore. The acquisition of land for railway siding was the responsibility of NPL. PSPCL/Govt. of Punjab were only to facilitate the acquisition, if required. 15 acres of private land was acquired by NPL itself during the period May, 2013 to September, 2014. Thus, NPL was in a position to acquire the land itself to expedite the construction of railway siding works. NPL to justify/explain why the delay in land acquisition was

allowed which resulted in increase in railway siding cost as against the original cost.NPL to also justify its claim of increased land cost since no escalation can be given considering Hon'ble APTEL's Order.

9. The approval of the Railways for the emergency crossover was applied for by NPL on 04.08.2014 and granted by DRM, NR Ambala vide letter dated 22.09.2014, although NPL came to know about the land acquisition problem in Bulb & ROR portion in early 2012. NPL to explain why it applied for the approval for use of surface cross over (normally to be used in emergency) to be used for regular / normal operation, in 2014 rather than 2012. Had the land been acquired on time by NPL itself and the permission for emergency cross over taken in time, the railway siding could have come on time along with the commissioning of the plant in February, 2014. NPL to provide justification for the same.
10. The correspondence with IOCL for the construction of the bridge over IOCL pipeline alongwith the specifications given by IOCL be provided.
11. As per the Freight Marketing Policy Circular No. 01 of 2012 on Siding Matters:

“4.3 In case the siding owner desires to bear the capital cost of traffic facilities to expedite commissioning of siding, the following will be permissible:

.....

(iii) No licence fees will be charged on the common user traffic facility at the station from the siding owner.

.....

9. Detailed Instructions for Sidings:

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(ii) Regarding expenditure to be incurred on account of construction of the new siding, the private entrepreneur shall get detailed estimate of their Siding vetted by the division concerned.

The detailed estimate shall include the break-up of their share as also Railways share of the total expenditure. The detailed estimate of Railways shall be according to standardized cost of superstructure per km of track as issued by Civil Engg Dept. Separate Cost shall be laid down for steel girders and PSC girders in case of bridges.[Emphasis Supplied]

(iii) No supervision, inspection or establishment charges shall be payable by the siding owner for the above work, since in that case the expenditure incurred for these aspects would have to be paid back to them by Railways.” [Emphasis Supplied]

(i) In view of the above:

- a) A copy of the estimates approved by Railways be provided.
- b) The break-up of NPL and the Railways share of the total expenditure be provided.
- c) In view of (iii) above, the Payment of Codal charges to Railways be justified.
- d) The applicable Codal Charges for works excluding OHE & S&T works by party (NPL) are 6.25% (as claimed by NPL) as against 4% if carried out by Railway approved Consultant. Payment of higher charges need to be justified.

(ii) As the railway siding work estimates were to be approved by the Railway authorities and the work was to be carried out under their supervision, the payment of Rs. 40.63 crore as Project Management charges to L&T-RBU be justified by NPL.

Thus, NPL has firstly paid higher codal charges of 6.25% rather than 4% to the Railways and secondly has paid Project Management charges amounting to Rs. 40.63 crore to its sister concern for the same work. NPL needs to justify this claim.

12. The Railway Codal Charges in 2011 RITES report were Rs. 11.55 crore whereas now Rs. 29.925 crore has been claimed. These codal charges have been paid @ 6.25% on the project cost of Rs. 478.80 crore on the demand of Northern Railways vide letter no. 15-W/949/Plan dated 10.10.2013. This amount appears to include codal charges on Project Management, Service Tax, Cost of Land, Locomotives, Others/Overhead charges etc also. NPL to justify the payment of codal charges on such components since previously these were payable only on the hard cost comprising Civil, S&T, OHE and GE works @ 4% as mentioned in 2008 & 2011 RITES Report.
13. No cost was attributed under the category ‘Others/Overhead Charges’ in 2011 RITES report, however now a claim of Rs. 17.99 crore has been put in on this account. NPL needs to give details of the same and justification.

NPL shall submit the aforesaid information within 4 weeks with a copy to PSPCL (through hard copy & soft copy). PSPCL may submit its reply to the information submitted by NPL within two weeks thereafter.

The petition shall be taken up for hearing on 14.10.2020 at 11.00 AM.

Sd/-
(Anjuli Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 25.08.2020